

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PUBLIC HEARING ON
of ARM 17.50.201 and 17.50.202,)	PROPOSED AMENDMENT AND
and the adoption of new rule I)	ADOPTION
pertaining to motor vehicle)	
wrecking facility license)	(MOTOR VEHICLE RECYCLING
)	AND DISPOSAL)

TO: All Concerned Persons

1. On February 16, 2006, at 10:00 a.m., the Department of Environmental Quality will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., February 6, 2006, to advise us of the nature of the accommodation that you need. Please contact Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or email rmartin@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.50.201 LICENSE TO OPERATE--APPLICATION

~~(1)(a) Application for license to operate a motor vehicle wrecking facility shall be made on forms furnished by the department. An applicant for a license to operate a motor vehicle wrecking facility shall use application forms provided by the department.~~

~~(2) There shall be submitted with the application a statement~~ An applicant shall submit, with the application, a written certification signed by the appropriate local government official having knowledge of local zoning ordinances certifying that the site operation of the proposed facility does would not violate any local government zoning ordinance in effect on the date that the application is filed with the department. If the appropriate local government official states that the operation would violate such an ordinance, the department shall deny the license application. If the appropriate local government official refuses fails to certify that the proposed facility does not violate any local government ordinance and make the certification and the applicant indicates the failure in writing on the application, the department shall determines that no if a zoning ordinance will would be violated, the department shall consider the application. If it determines that the operation

of the proposed facility would violate a zoning ordinance, the department shall deny the application. If it determines that the operation of the facility would not violate a zoning ordinance, the department shall continue to process the application.

~~(b) All the information requested on the application form must be completed before the department will act on the application.~~

~~(c) The department may deny the application if the applicant fails to provide information requested by the department.~~

~~(2) When the completed application is received, the department is to approve the site location before a license will be issued.~~

(3) Before an application is approved and a license to operate is issued, the department shall inspect the facility and the facility must be in compliance with the shielding requirements of ARM 17.50.202. If the department determines that an application is not complete, it shall return the application to the applicant with a written statement that it is not complete. The department may not continue to process the application until the applicant submits a complete application. A determination that an application is not complete is not a denial of the application.

(4) As required by 75-10-516, MCA, in deciding whether to grant or deny a license application, the department shall consider the effect of the proposed facility on adjoining landowners and land uses.

(5) Before approving a license application and issuing a license, the department shall inspect the facility. The department may not issue a license if the facility is not in compliance with the shielding requirements of ARM 17.50.202.

AUTH: 75-10-503, MCA

IMP: 75-10-503, MCA

17.50.202 SHIELDING OF FACILITIES (1) and (2) remain the same.

(3) A person possessing a junk vehicle shall shield it in compliance with the following requirements:

(a) Fences must be constructed of sound building materials.

(b) Rough dimensional lumber or better is acceptable. Slabs are not considered rough dimensional lumber. Other types of fencing of equivalent performance, attractiveness, and shielding qualities are also acceptable. Plastics or other materials placed over junk vehicles are not acceptable, except that a reasonably attractive car cover specifically designed to attach tightly to and cover a motor vehicle is acceptable for shielding one junk vehicle at a single location.

(b) through (4) remain the same, but are renumbered (c) through (e).

~~(5) (4) To preclude misunderstanding, prior approval should be obtained from the department for fences other than the~~

~~2 types specified above (i.e., metal and wood fences). A person may not use a fence for shielding if it is made of material other than wood consisting of rough dimensional lumber or better, as provided in (3)(b), or chain link with inserts, as provided in (3)(c), unless the person first submits a request in writing to the department and obtains the department's written approval. Unless otherwise specifically approved by the department, a person may not use no more than one type of approved shielding material may be used on any one side of the facility. Unless otherwise specifically approved by the department, shielding on any one side of the facility must be of a uniform color.~~

~~(6) (5) It is realized that in certain situations A licensee of a motor vehicle wrecking facilities which existed facility existing prior to July 1, 1973, that cannot be successfully shielded from certain viewpoints, (for example, a view from a public road located at a higher elevation than a facility). In such instances, shall shield as determined appropriate by the department shall make a decision as to the degree of shielding necessary on a case-by-case basis.~~

(7) and (8) remain the same, but are renumbered (6) and (7).

(8) The following materials are not acceptable for use as shielding, but may be used as structural support for shielding if they are concealed from public view:

- (a) semitrailers;
- (b) shipping containers (an exception allowing use as shielding may be approved on a case-by-case basis);
- (c) mobile homes;
- (d) trailer houses; or
- (e) baled tires (except that they may be used as shielding when encased in a material that will maintain the integrity of the bale upon failure of the bale restraining devices, as provided in 75-10-250, MCA).

AUTH: 75-10-503, MCA

IMP: 75-10-503, MCA

4. The proposed new rule provides as follows:

NEW RULE I COMPLETION OF SHIELDING (1) If the department decides, after determining that an applicant for a license has met all the licensing requirements of this subchapter except for the shielding requirements in ARM 17.50.202, that a license should be issued when the applicant has complied with shielding requirements, the department shall issue and mail to the applicant a written statement that the applicant has complied with all requirements, other than shielding, of Title 75, chapter 10, part 5, MCA, and this subchapter, and that it has decided that a license should be issued if the shielding requirements are satisfied within eight months. If the applicant then complies with the shielding requirements in ARM 17.50.202 and submits acceptable evidence of that compliance to the department within eight months after the date that the

department issued the statement, and otherwise remains in compliance with Title 75, chapter 10, part 5, MCA, and this subchapter, the department shall inspect and determine compliance under ARM 17.50.502(3). If it determines that the applicant is complying with shielding and other requirements, the department shall issue the license.

(2) If an applicant who has received a statement under (1) violates any requirement of Title 75, chapter 10, part 5, MCA, this subchapter, or an order of the department issued pursuant to Title 75, chapter 10, part 5, MCA, or this subchapter, the department may take enforcement or other action authorized by Title 75, chapter 10, part 5, MCA, or this subchapter.

AUTH: 75-10-503, MCA

IMP: 75-10-503, MCA

REASON: Minor clerical revisions are proposed for ARM 17.50.201 and 17.50.202 that are intended to make the rules clearer. They are not intended to affect the meaning of the rules. ARM 17.50.201(1)(b) and (c) are proposed to be modified and renumbered to make it clear that the Department cannot process an application that is not "complete." The Department intends "complete" to have the same meaning as in the Montana Environmental Policy Act, where it is defined in 75-1-220(2), MCA, to mean containing all information necessary for an approval.

ARM 17.50.201(2), concerning local zoning requirements, is being proposed for amendment to clarify how the Department addresses local zoning issues when evaluating motor vehicle wrecking facility license applications. If the local zoning officer certifies that the facility does not violate a zoning ordinance, the Department would be required to continue to process the application. If the zoning officer states that the facility would violate a zoning ordinance, the Department would be required to deny the application. If the zoning officer makes no statement, the Department would make its own determination: if it determines the facility would violate an ordinance, the Department would deny the application; and if it determined that no zoning violation would occur, it would continue to process the application.

ARM 17.50.202(3), concerning shielding of junk vehicles and facilities, is being proposed for amendment to make the rules conform to standard rulemaking format and to use active voice to make it clear that duties are imposed on the entity specified. Other sections in ARM 17.50.202 are being renumbered to reflect the reformatting just discussed.

ARM 17.50.202(8) would provide a list of materials that are unacceptable for use as shielding. These unacceptable materials include semitrailers, shipping containers, mobile homes, trailer houses, and baled tires. Various parties have used one or more of these materials in attempts to meet the shielding requirements of ARM 17.50.202.

The Department believes that semitrailers, shipping containers (in most cases), mobile homes, trailer houses, and

baled tires do not accomplish the legislative intent behind the shielding requirement in 75-10-501(9), MCA, which is to prevent unsightly junk vehicles from being seen from public view (defined as six feet above the center of a public roadway). The Legislature required the Department to adopt rules pertaining to shielding in 75-10-503(1)(f), MCA. The Department has determined that the materials listed above are unsightly when used as shielding, and that their use would defeat the purpose of the shielding requirement. Therefore, the Department proposes to ban their use, but a person wishing to shield a junk vehicle with a shipping container may submit a written request to the Department. The Department may grant the request only by making a written determination that the requestor has demonstrated that the container is not unsightly and that its use would not defeat the purposes of the shielding requirement. Also, in ARM 17.50.202(8)(e), the Department is proposing to allow the use of baled tires as shielding only if the tires are encased in a material that maintains the integrity of the bale. The cables, straps, or wires holding the tires together must be sufficient to keep the bale from failing. Baled tires encased in a material designed to maintain their integrity are not likely to be unsightly, and may be used for aboveground uses under 75-10-250, MCA. The proposed rule recognizes that encased tires may also be used as shielding. Another rule, ARM 17.50.202(5), renumbered ARM 17.50.202(4), requires that shielding on each side of a facility be a uniform color, and that would apply to the material encasing baled tires.

New Rule I is necessary to minimize the risk that a license applicant takes on in constructing shielding, and allows for construction at a time when the ground will not be frozen. If an applicant for a license has met all the motor vehicle wrecking facility licensing requirements except for the shielding requirements in ARM 17.50.202, and the Department, after taking into account the effects on adjoining landowners and land uses, has decided that a license should be issued, the proposed new rule would require the Department to inform the applicant that it will get a license if it completes shielding within eight months and otherwise remains in compliance with the motor vehicle wrecking facility laws and rules.

The reason for this proposed new rule is that the construction of shielding may be the most expensive part of constructing a motor vehicle wrecking facility; it may run into tens of thousands of dollars. Because a license applicant cannot get a license until it complies with shielding requirements, the applicant currently runs a risk that it will have to spend a lot of money to comply with shielding requirements before it knows if it can obtain the license. For instance, a local government can make a decision (that is binding on the Department) not to allow the facility to obtain a license, and the Department can make a discretionary decision not to grant a license based on the effects on adjoining landowners and land uses. The Department believes it is not fair to subject a licensee to the risk of constructing shielding only to find that the facility will not be approved. So, it is

proposing New Rule I to require the Department to send a licensee a statement so that it will know that it will be able to obtain a license if it otherwise stays in compliance and constructs shielding within eight months after the statement is issued. The Department is proposing eight months for the length of the period because it believes that in any eight-month period there will be enough time for an applicant to construct shielding during a time when the ground is not frozen.

An applicant should be aware that the Department's statement is not a guarantee that a facility can be built or operated; an applicant must still comply with all federal, state, and local laws, rules, regulations, and other requirements before constructing shielding or operating a facility. For instance, the facility might be subject to enforcement by a county or city if it did not meet zoning or building codes when it started to construct or operate.

5. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Robert A. Martin, Waste and Underground Tank Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-4194; fax (406) 444-1374; or email rmartin@mt.gov, no later than February 23, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Norm Mullen, attorney, has been designated to preside over and conduct the hearing.

7. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to ejohnson@mt.gov or may be made by completing a request form at any rules hearing held by the Department.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

John F. North
JOHN F. NORTH
Rule Reviewer

BY: Richard H. Oppen
RICHARD H. OPPER, Director

Certified to the Secretary of State, December 12, 2005.